

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

STEPHANIE MERCIER,
AUDRICIA BROOKS,
DEBORAH PLAGEMAN,
JENNIFER ALLRED,
MICHELLE GAVIN,
STEPHEN DOYLE, on behalf of themselves
And all others similarly situated,

Plaintiffs,

v.

No. 12-920C
(Judge Kaplan)

THE UNITED STATES,

Defendant.

STATUS REPORT

Pursuant to the Court's May 28, 2021 Order, defendant, the United States, respectfully submits the following status report. Following mediation, the parties reached an agreement in principle to settle this litigation. Since our previous status report, counsel of record for the Government informed his superiors of the Court's concerns regarding the length of the Department of Justice settlement approval process and its desire that an ultimate decision be reached expeditiously. In light of the protracted history of this litigation, the Government, likewise, hopes to achieve a final resolution of this matter as soon as possible. To that end, the necessary steps to reach a decision regarding the proposed settlement have been, and continue to be taken; the proposal remains under active consideration.

During the May 28, 2021 status conference, in response to the Court's inquiry, counsel for the Government communicated his understanding, based upon his review of emails, that the settlement recommendation memo was no longer in the Civil Division and had progressed to the

office of the Associate Attorney General. Counsel misunderstood the import of those emails. In preparation for this status report, counsel for the Government has been advised by those with direct knowledge that the recommendation memo, as of June 14, 2021, is currently being reviewed by the Acting Assistant Attorney General. To date, the settlement recommendation memo has passed through three levels of approval, each with its own process for review and recommendation, and is now in the penultimate level. Each stage of the approval process is iterative; the content of the settlement recommendation memo has been shaped by successive rounds of questions by higher level authorities and responses by offices that forwarded the memo up the hierarchy. As plaintiffs' counsel has mentioned previously, the parties reached an agreement regarding the language of the proposed settlement agreement and the attachment thereto on or about March 18, 2021. Following several rounds of internal revisions, the National Courts section forwarded the settlement recommendation memo to Main Justice on March 31, 2021. The National Courts Section participated in several rounds of revisions with the Deputy Assistant Attorney General for the Commercial Litigation Branch until May 11, 2021. Since then, the settlement memo has been before the Acting Assistant Attorney General for the Civil Division whose office is actively reviewing the memo. We expect the Acting Assistant Attorney General's review to be concluded soon.

Upon the completion of the Acting Assistant Attorney General's review, the recommendation memo will be forwarded to the final decision-maker, the Associate Attorney General. Like all proposed settlements that require approval within the highest levels of the Department of Justice, this proposal will receive appropriate review and potential follow-up, questions, and revisions, as occurred at earlier stages of the review process. Although it is not possible to provide a time for completion of that review, all of the relevant officials involved in

this settlement approval process appreciate the importance of resolving this litigation as expeditiously as feasible. If the Court desires, counsel for the Government can discuss these matters further in a status conference.

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

MARTIN F. HOCKEY, JR.
Acting Director

s/ Reginald T. Blades, Jr.
REGINALD T. BLADES, JR.
Assistant Director

s/ P. Davis Oliver
P. DAVIS OLIVER
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 353-0516
Fax: (202) 514-8624

Attorneys for Defendant

June 14, 2021